

In Confidence

Office of the Minister of Revenue

Chair, Cabinet Legislation Committee

TAX ADMINISTRATION (EXTENSION OF NOTIFICATION DEADLINE FOR RESEARCH AND DEVELOPMENT TAX CREDITS) ORDER 2022

Proposal

- 1 This paper seeks the Cabinet Legislation Committee's agreement to submit an Order in Council making the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 to the Executive Council.
- 2 The Order would extend the deadline that some R&D businesses have for notifying Inland Revenue that there have been no material changes for their business for the 2021–22 income year to 30 April 2023.

Relation to Government Priorities

- 3 This Order in Council is recommended to help administer the Research and Development Tax Incentive (RDTI), which provides a 15% tax credit to businesses for eligible R&D expenditure in New Zealand.
- 4 The Labour 2020 Election Manifesto indicated a continuation of investment in innovation through the RDTI as part of “preparing for the future” in Labour’s recovery plan. The Government also has a goal of increasing R&D expenditure to two percent of GDP by 2027.

Background

- 5 Businesses enrolled in the RDTI normally require a general approval from the Commissioner of Inland Revenue to be eligible for an R&D tax credit. A business that is approved for multiple years is currently required to notify Inland Revenue each year to confirm that there have been no material changes for their business for the relevant income year.
- 6 This requirement creates compliance costs for businesses as it obliges them to proactively contact Inland Revenue to confirm that their approval is still valid. It is an administratively intensive requirement for Inland Revenue to enforce as it requires manual checking of web messages by staff.
- 7 Consequently, I have agreed that a remedial amendment to remove this requirement should be included in the upcoming omnibus taxation Bill to be introduced in August 2022. It is more sensible to require businesses to notify Inland Revenue when there is a material change in their business rather than when there is not one.

- 8 This change is expected to be in force from March 2023. This means that the existing notification requirement is in force until then, and the RDTI cannot be processed for businesses that did not make the requisite notification on time for the 2021–22 income year (the first year the requirement is applicable for). The deadline for making the notification is normally the seventh day of the second month after the end of the income year (for example, a 31 March balance date taxpayer would be required to provide this notice by 7 May 2022 for the 2021–22 income year).

Order in Council

- 9 The existing deadline for making the notification is problematic for the 2021–22 income year. For some taxpayers, it was impossible to make the notification on time even if they were willing to and knew they needed to do so. This is because of delays in the processing of general approvals for some businesses, which meant they could not confirm that there have no material changes for their business (relative to an approval that they did not yet have).
- 10 The Tax Administration Act 1994 includes a broad power to extend the time by Order in Council for doing something under the Act. This would include extending the deadline for businesses in the RDTI to make this notification.
- 11 I therefore recommend the making of the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022. This Order in Council would extend the deadline for the 2021–22 income year for notifying of no material changes for a business from the seventh day of the second month after the end of the income year to 30 April 2023.
- 12 Without this Order in Council, RDTI businesses that file their 2021–22 income tax return before March 2023 will experience a delay in receiving their tax credit. I consider that delaying R&D tax credits due to businesses not telling Inland Revenue that there have been no material changes for their business is harsh and counter to the intent of the RDTI, especially for businesses for which it was impossible to make the notification on time.

Timing and 28-Day Rule

- 13 I propose that the Order in Council giving effect to this extension of an RDTI notification deadline comes into force on 1 September 2022. This would require a waiver of the 28-day rule for regulations coming into force. A waiver is sought on the grounds that it is in the best interests of both taxpayers and the Government.
- 14 Not waiving the 28-day rule will cause frustration for businesses that want to make the notification required of them but are legally prevented from doing so. The consequential delay in RDTI businesses being paid tax credits would add further frustration for affected businesses. No waiver would also mean Inland Revenue has to wait 28 extra days to fully process the income tax returns of affected RDTI businesses, which would increase the processing backlog.

Compliance

- 15 The Order in Council complies with:
- 15.1 the principles of the Treaty of Waitangi;
 - 15.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the [Human Rights Act 1993](#);
 - 15.3 the principles and guidelines set out in the [Privacy Act 1993](#);
 - 15.4 relevant international standards and obligations;
 - 15.5 the [Legislation Guidelines](#) (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 16 There are no anticipated grounds for the Regulations Review Committee to draw the attached Order in Council to the attention of the House.

Certification by Parliamentary Counsel

- 17 The Parliamentary Counsel Office has certified that the attached Order in Council is in order for submission to the Executive Council, provided that the 28-day rule is waived.

Impact Analysis

- 18 The Treasury's Regulatory Impact Analysis team has determined that the extension of the notification deadline for R&D tax credits is exempt from the requirements to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals, and not-for-profit entities.

Communications

- 19 Inland Revenue will publish an article about this Order in Council in its *Tax Information Bulletin*.

Proactive Release

- 20 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers with appropriate redactions within 30 working days of Cabinet making final decisions.

Consultation

- 21 Inland Revenue has been consulted in the preparation of this paper and agrees with its recommendations. The Treasury, Callaghan Innovation, and MBIE were informed of this paper.

Recommendations

The Minister of Revenue recommends that the Committee:

- 1 **note** that the Research and Development Tax Incentive (RDTI) currently requires businesses to notify Inland Revenue that there have been no material changes for their business for the relevant income year if they have general approval for multiple income years;
- 2 **note** that the normal deadline for making the notification referred to in recommendation 1 is the seventh day of the second month after the end of the income year;
- 3 **note** that the Tax Administration Act 1994 includes a broad power to extend the time by Order in Council for doing something under the Act;
- 4 **note** that the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 would extend the deadline in recommendation 2 until 30 April 2022 for the 2021–22 income year;
- 5 **agree** that the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 give effect to this extension of the deadline for making the requisite notification under the RDTI;
- 6 **note** that a waiver of the 28-day rule is sought:
 - 6.1 so that the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 can come into force on 1 September 2022;
 - 6.2 on the grounds that not waiving the rule will:
 - 6.2.1 cause frustration for RDTI businesses that want to comply with the law but are unable to for a further 28 days, resulting in a delay of receipt of R&D tax credits; and
 - 6.2.2 increase the RDTI processing backlog for Inland Revenue due to not being able to process notifications for a further 28 days;

- 7 **agree** to waive the 28-day rule so that the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022 can come into force on 1 September 2022;
- 8 **authorise** the submission to the Executive Council of the Tax Administration (Extension of Notification Deadline for Research and Development Tax Credits) Order 2022.

Authorised for lodgement

Hon David Parker

Minister of Revenue